



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901



November 21, 2011

Jeanine Townsend
Clerk to the Board
1001 I Street, 15th floor
Sacramento, CA 95814

Comment re: USFS Waiver

Dear Ms. Townsend:

The U.S. Environmental Protection Agency is providing comments on the Draft Statewide Forestry Waiver for U.S. Forest Service (USFS) lands. We are providing these comments in the context of our responsibilities under the Clean Water Act (CWA) sections 303(d) and 319. These sections of the CWA are commonly referred to as the Total Maximum Daily Load (TMDL) and Nonpoint Source (NPS) programs. We commend your use of Waivers and related regulatory authorities as essential to these programs to address existing water quality impairments and protect the highest attainable uses for waterbodies that are not currently impaired.

In general, the approach under the proposed Waiver is reasonable, appears to be based on appropriate Best Management Practices (BMPs), and is responsive to water quality protections and concerns. However, we provide these comments which, if incorporated, will strengthen the ability of the Waiver to maintain or restore water quality standards and beneficial uses in the waterbodies that may be affected by the USFS's various land use activities across the state. EPA acknowledges that the revised Waiver incorporates and addresses many of our previous comments and concerns. Some of our comments below are repeated and/or clarified from our previous comments.

General Comments:

Industrial logging road management, and possibly all related commercial/industrial logging infrastructure and activities, may need to be covered under a NPDES permit as they are no longer considered nonpoint sources under the CWA due to the recent Ninth Circuit Court decision (*NEDC v. Brown*). In order to clarify this, Finding 36(b) should be modified to state that the Waiver does not cover "Discharges subject to other NPDES permits . . . including, but not limited to, logging roads..." If and when the State Board decides to begin the process of

developing NPDES permits to address logging roads, reliance on the expertise of the Regional Board staff that are most familiar with logging activities and their potential water quality issues is critical to ensure that the NPDES permit will be technically and legally relevant to these issues and sufficiently protective of water quality in the affected waterbodies. We do recognize and acknowledge that the USFS has been actively working on reducing water quality impacts from its road network in many of the National Forests. Our analyses associated with TMDL development has, almost invariably, identified roads as the largest contributor to elevated sediment and temperatures in waterbodies that are identified as impaired.

It is not clear how the specific requirements for each waterbody will be determined and enforced for permit holders. Expectations should be made clear to both the permittee and the regulatory agencies. This will also help to protect water quality by retaining the Regional Board's regulatory authorities.

USFS Water Quality Management Plan (WQMP) Section:

Finding 22, pg. 9. It would be helpful to cross-reference where these WQMP amendments are found in the WQMP itself. This would assist the Regional Board or State Board inspector to identify what management measures should be applied in the field.

Legal and Regulatory Structure Section:

Finding 32, p. 13. Statements attributed to EPA's determination that Northwest Forest Plan (NWFP) standards and guidelines may be potentially sufficient to attain riparian vegetation characteristics consistent with temperature load allocations on USFS lands apply only to the specific TMDL documents in which they were originally identified. These statements were specific to those waterbodies, and were not intended to apply statewide to USFS lands without additional analytical support, nor should they be construed as constituting "compliance with the implementation requirements for TMDLs." EPA appreciates efforts that are currently underway in the North Coast Regional Board to investigate the methods by which such a waiver can address 303(d)-listed impairments, but it is not appropriate to suggest that additional analysis will not be required to ensure that water quality standards will be attained under this Waiver. This Finding should be modified to reflect this.

It is also worth noting that USFS is currently operating under a similar Waiver in the North Coast Regional Board. EPA would like to see that USFS is able to comply with the conditions in that Waiver (e.g., the reporting requirements).

Finding 35, p. 13. The statement "The Waiver may cover these activities and projects, regardless of whether they are conducted by USFS staff, contractors." should be revised to clarify that USFS retains responsibility for ensuring compliance with the Waiver, regardless of which entity (e.g., USFS, permittees or contractors) implements the required actions.

Finding 37, p. 14. The previous version of the Waiver also stated that discharges of hazardous waste, discharges subject to hydropower relicensing, and discharges from septic tanks or

alternative wastewater disposal systems were removed. Without adequately ensuring that these discharges can be effectively addressed by the Waiver, it appears that these exclusions should be included.

Statewide General Conditions:

Statewide General Conditions 2, pg. 22 (legacy or pre-existing discharges and/or threats to water quality). It should be made clearer what percentage of the affected watersheds in the USFS system are proposed to be covered. It would be helpful to have an understanding of how many water-quality impaired watersheds have been assessed thus far, and how many have not yet been assessed. The Waiver should communicate the expectations of the State Board for USFS assessment activities, and should encourage timely analyses to meet the requirements of other State and Federal planning and restoration efforts.

If the USFS were to conduct analyses at a fine enough (HUC-12) scale, then those efforts may give them the opportunity to take advantage of available State grants to address nonpoint sources in TMDL waterbodies, such as those available under CWA Section 319 and the State Revolving Funds, administered by the State Board. Also, Proposition 84 funds administered by the Department of Water Resources may be particularly useful to the USFS, as they can be used to address both point and nonpoint source planning and implementation activities. Coordination of assessment and prioritization activities will help the USFS compete more favorably for the available implementation funding.

Statewide General Conditions 5, pg. 23. USFS should be required to identify potential Category B (moderate risk) activities within each project. However, the ultimate decision for assigning the risk category should rest with each Regional Board.

Statewide General Conditions 12, pg. 24. If restricting exclusive authority to determine a contractor's compliance or permittee's compliance with contract terms or grazing permits to USFS will limit the ability of the Regional Boards to enforce against contractors or permittees, we suggest removal of that condition so that the Regional Boards retain the ability to enforce against water quality violations. Alternatively, the condition should be modified to specifically include the Regional Boards' abilities and responsibilities to enforce against non-compliant contractors or permittees.

Statewide General Conditions 13, pp. 24. The last sentence should be modified to include "...policies adopted or approved by the State or **Regional Boards.**" This is necessary since some TMDLs are adopted by single action votes or certification by Executive Officers of Regional Boards.

Statewide General Conditions 17, pg. 25. Please define "less than significant levels." We suggest cross-referencing to where this is defined elsewhere in the Waiver.

Statewide General Conditions 25, pg. 26. Some examples of unforeseen circumstances in the past that may have constrained USFS activities would be helpful. The affected Regional Board

as well as the State Board should assess and approve any request from USFS for modifications to the Waiver.

Waiver Categories (page 27)

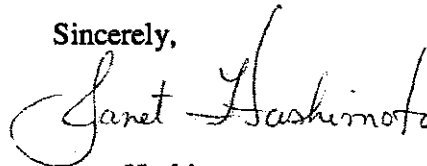
Adding a third category of regionally-specific risks or concerns (possibly falling between "low" and "moderate" risks) may be useful to provide the Regional Boards greater discretion for addressing regionally-important issues. We commented earlier that the Statewide Waiver should allow for regional modifications or regional issues to be addressed through the Waiver. Regional Boards can identify what these issues and activities are and develop appropriate approaches which can be added as appendices to the Waiver.

Category B General Conditions, p. 30

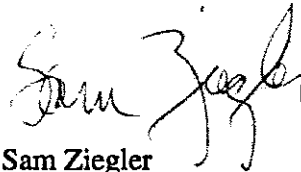
We are concerned that previous condition 6 was removed. We recommend re-insertion of the condition 6 to protect water quality. It stated: "The activity must be conducted in accordance with the project description in the accompanying USFS project document, including any project modifications, and the specific on-the-ground prescriptions designed to implement the BMPs identified to avoid any adverse impact(s) to water quality."

Thank you for the opportunity to ~~comment~~ and provide our concerns on the USFS Waiver. We also appreciate your willingness to extend the deadline by a short time for us. If you have any questions, please feel free to call Janet Hashimoto at (415) 972-3452, Sam Ziegler at (415) 972-3399, Janet Parrish at (415) 972-3456, or Wilson Yee at (415) 972-3484.

Sincerely,



Janet Hashimoto
Chief, Standards and TMDL Office



Sam Ziegler
Chief, Watersheds Office

cc: Gaylon Lee
Forest Activities Program Manager
State Water Resources Control Board